

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #06-604

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from October 15, 2008, through November 14, 2008, on IDEM's draft rule language. IDEM received comments from the following parties:

Eli Lilly and Company	(ELC)
Improving Kids Environment	(IKE)
Indiana Manufacturers Association, Inc.	(IMA)
National Paint and Coatings Association	(NPCA)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Improving Kids Environment supports the agency moving forward with this rulemaking for the following reasons:

1. These coatings can be a significant source of volatile organic compounds (VOCs), one of the key contributors to ground level ozone. Although ozone levels have been improving throughout Indiana, high ozone still presents a public health threat to our citizens throughout the state. Data presented by IDEM at the October 2008 Indiana Air Pollution Control Board meeting indicate that 12 counties measured ozone air quality in excess of the recently revised ozone health standard of 0.075 part per million (based on 2006-08 monitoring data). With the recent overturning of the Clean Air Interstate Rule and resulting uncertainty about continued power plant reductions of nitrogen oxides and sulfur dioxide, it is prudent to continue to implement reasonable measures to reduce harmful air pollutants where it makes sense to do so.
2. We are increasingly aware of the regional nature of ozone pollution. Concentrating control programs in the urban areas is no longer sufficient to address unhealthy ozone levels. Implementing cleaner AIM coatings across a broad geographic region will be most effective in improving air quality. Participating constructively with the regional consortium (LADCO) is neighborly and good public policy.
3. The market for AIM coatings is regional and national. Having different requirements in different states or different regions within states is disruptive, confusing, and does not lead to the most economically efficient result.
4. If and when U.S. EPA promulgates a rule addressing this category, IDEM and the other Midwest states can evaluate whether any adjustments need to be made. Indiana should not continue to wait for a federal rule that has been promised but not delivered.

(IKE)

Response: IDEM is cognizant of the importance in addressing the ozone issue from a regional perspective. This rulemaking, in conjunction with the rulemakings conducted by the other LADCO states, will assist in controlling VOCs in order to ensure compliance with U.S. EPA's newly issued 8-hour ozone standard and the proposed revised standard currently under consideration.

Ensuring that AIM coating requirements are consistent with other LADCO states and the eleven OTC states that have effective AIM rules, has been an important consideration for the department when drafting the rule language. IDEM understands the importance of consistency for a rulemaking that affects AIM coatings producers nationwide.

When U.S. EPA amends the existing federal AIM coatings rule (40 CFR Part 59, Subpart D), IDEM will amend the state AIM rule, if necessary. However, to date, U.S. EPA has not published their proposed revisions to the federal AIM rule. Therefore, IDEM is moving forward with this rulemaking.

Comment: The NPCA supports the proposed implementation date of January 1, 2010.
(NPCA)

Response: IDEM had to complete a fiscal impact analysis for this rulemaking as required under Indiana Code, Section 4-22-2-28(c) and (e), which added additional time to the rulemaking schedule, and made IDEM's original proposed implementation date of January 1, 2010 impractical. Therefore, IDEM has amended the implementation date to January 1, 2011.

Comment: Lilly generally supports the concept of limiting VOC content in architectural and industrial maintenance (AIM) coatings as a step towards achieving the National Ambient Air Quality Standards for Ozone. By focusing the requirements of the rule on the production of the coating material itself, the rule can achieve environmental benefit at a reasonable cost.

Lilly believes, however, that the rule should apply only to the manufacture and sale of AIM coatings in Indiana, and users of AIM coatings should be outside the scope of the rule. IDEM's proposed rule extends liability and compliance management requirements to "any person who applies or solicits the application of any AIM coating within the state of Indiana." This means that any company that applies AIM coatings to its facilities, or hires someone to apply AIM coatings to its facilities is in violation of the proposed rule if a manufacturer or seller of an AIM coating provides a coating that does not meet the VOC content requirements of the proposed rule, or if a painting contractor uses noncompliant coatings. Extending liability to the party that has the least ability to control the VOC content of coatings is excessive, and merely serves a punitive purpose, not an air quality purpose.

Moreover, if proposed rule 326 IAC 8-14 were applicable to facility owners that are subject to the Title V operating permit program, the rule would be an "applicable requirement", and consequently must be contained in the facility's Title V permit. The responsible official for the facility (typically a plant manager) would then be required each year to certify the facility's

compliance status with regard to the rule. In order to certify compliance status, the facility would have to develop a compliance management system that ensures it knows whether each and every AIM coating applied at the facility meets the requirements of Rule 8-14. For a large industrial or commercial facility, where AIM coatings are applied perhaps on a daily basis, developing a system to monitor and verify that each coating meets the requirements of Rule 8-14 would be quite extensive, and yet provide little environmental benefit because the true environmental benefit for the proposed rule occurs when the low VOC coating is manufactured.

Lilly recommends changing the draft rule language to remove references that would extend the applicability of the rule to “any person who applies or solicits the application of any AIM coating within the state of Indiana.” (ELC)

Comment: The interest of the IMA in the proposed rule is primarily one of applicability. The greatest benefit for VOC reduction will occur in the reformulation of the product itself. The application of the product from current inventories will yield a finite amount of reduction and compared to the administrative burden there is a diminished return.

Manufacturing facilities are constantly engaged in maintenance projects which employ the use of various coatings. Many of these facilities are also subject to regulation under Title V. The proposed rule would ultimately be part of the facility’s annual certification of compliance; and as a result, the facility would need to implement costly internal verification procedures to assure appropriate coatings were used. These procedures, however, would yield very little environmental benefit because the real environmental benefit of the proposed rule occurs at the point of coating production, not at the point of application.

Please consider modification of the draft rule to focus less on the end use of AIM coatings so as to avoid unnecessary burden to facility compliance efforts with limited environmental benefit. (IMA)

Response: IDEM reviewed the status of AIM coatings rules in the thirteen OTC member states. Eleven of the thirteen OTC states have effective AIM coatings rules and all eleven states extend applicability of the rule to persons that apply or solicit the application of any AIM coating. Additionally, Illinois and Ohio have effective AIM coatings rules that extend the applicability to persons who apply or solicit the application of AIM coatings.

IDEM understands ELC’s concern about the extension of liability in the case where a painting contractor may apply a noncompliant coating. However, emissions of VOCs occur not just during the production of the coatings but also at the point of application. IDEM has made a commitment to institute an AIM coatings rule as part of Indiana’s State Implementation Plan (SIP) development. The department has included the expected reductions of VOCs resulting from both manufacturing and end users as part of the SIP development process. Limiting the scope of applicability to exclude end users will result in the department failing to honor existing commitments regarding regional ozone SIP planning and development.

Regarding concerns about extension of liability, companies that apply AIM coatings or hire contractors to apply coatings may ensure compliance by requiring that contracts for the application of coatings or coating purchases require the use of compliant coatings. Generally,

manufacturers of coatings have this information readily available. The rule does require that facilities monitor more closely their usage and type of coatings, but, IDEM does not believe that such a requirement is overly burdensome as to require a change the scope of applicability of the rule that has been consistently utilized in the majority of states with AIM coating rules.

ELC and IMA are concerned that large industrial facilities, where AIM coatings are applied frequently, would be burdened by having to develop a system in order to monitor and verify that each coating meets the requirements of the rule. IDEM respectfully disagrees. Compliant coatings for the coating categories in this rule have been readily available for several years. Eleven of the thirteen OTC states, Ohio, and Illinois have nearly identical AIM coating rules in place, many which have been in effect since 2005. In all of these states, there are facilities that have Title V permits that are also subject to their state's AIM coatings rule. Additionally, the draft rule has sell through provisions that apply to all AIM coatings (326 IAC 8-14-3(d)). The sell through provisions allow: 1) coatings manufactured prior to January 1, 2011, to be sold, supplied or offered for sale until January 1, 2014; and 2) coatings manufactured before January 1, 2011, to be applied at any time both before and after January 1, 2011, so long as the coating complied with the standards in effect at the time the coating was manufactured. IDEM understands that sources may have coatings subject to this rule in their inventory or they may purchase noncompliant coatings after the effective date of the rule. The sell through provisions allow a phasing in of compliant coatings into the company's operations.

Comment: The draft rule has special provisions for traffic markings. IKE supports these requirements, but suggests that the limits be applied year round rather than just during the ozone season. Seasonal limitations add a layer of complication for implementation and compliance determinations. Without a compelling reason to adopt a seasonal limit, IKE urges uniformity and simplicity. (IKE)

Comment: For consistency with other OTC and LADCO AIM rules, NPCA suggests that IDEM drop the lower "ozone season" VOC limit from the rulemaking for traffic marking coatings and include only one VOC content limit of 150 g/l. (NPCA)

Response: The draft rule provides two VOC content limits for traffic marking coatings. One for the ozone season that runs from May 1 through September 30 (91 g/l) and one for the nonozone season that runs from October 1 through April 31 (150 g/l). The VOC content limit recommended by NPCA of 150 g/l is the VOC content limit for traffic marking coatings in the existing federal AIM coatings rule (40 CFR Part 59, Subpart D). Manufacturers of traffic marking coatings are already subject to this VOC content limit.

Including more stringent VOC limits for traffic marking coatings in the rule was part of LADCO's recommendations to its member states as part of the regional effort to control ozone. The draft rule language is from Wisconsin's rule limiting the VOC content of traffic marking coatings (NR 422.17). The more stringent VOC content limit for traffic markings is approximately 39% lower than the limit imposed by the federal rule and the OTC model rule.

Sources subject to the traffic marking coating VOC content limit and 326 IAC 8-14-7

(application of traffic marking materials) of the draft rule, may comply with the lower VOC content limit year round if it would be more effective or efficient for them to do so. The rule does not compel a source to comply with the lower limit only during the ozone season.

Comment: Lilly recommends the following changes to the proposed rule shown by underlining:

326 IAC 8-14-2 Definitions

(70) "Traffic marking coating" means a coating labeled and formulated for marking and striping publicly-owned streets, publicly-owned highways, or other publicly-owned traffic surfaces, including, but not limited to, the following:

- (A) Curbs.
- (B) Berms.
- (C) Driveways.
- (D) Parking lots.
- (E) Sidewalks.
- (F) Airport runways. (ELC)

Response: The definition that IDEM used for traffic marking coatings in the draft rule is the definition for traffic marking coatings that is used in the existing federal AIM coatings rule (40 CFR Part 59, Subpart D) and the OTC model rule. IDEM will maintain consistency with the existing federal AIM coatings rule and the OTC model rule.

Comment: NPCA recommends adding "Reactive Penetrating Carbonate Stone Sealer" to the definitions and VOC table. Carbonate stone, and in particular Indiana limestone is widely utilized as an exterior structural and facade component in commercial and institutional construction. Limestone, marble and other carbonate substrates are generally durable and sustainable; however, they are subjected to accelerated weathering and decay due to biological growth, water intrusion and freeze/thaw cycles, and are particularly sensitive to acid rain. The northeastern United States has an estimated inventory of 50,000 buildings, 10,000 memorials and tens of millions of grave markers constructed of carbonate stone subject to acid rain degradation that needs protection.

Penetrating reactive carbonate stone sealers are typically specified by building maintenance specialists and conservators. These sealers function by penetrating the surface and reacting at a molecular level and do not form a surface film and therefore allow outward migration of internal moisture while preventing water intrusion. Since carbonate stone does not contain necessary silicates for reaction so a "bridging" silicate source is required, however these products are incompatible with aqueous carriers so a higher VOC content is needed. Please add the provided definition of "Reactive Penetrating Carbonate Stone Sealer" to the definitions and VOC table (600 g/L). (NPCA)

Response: IDEM reviewed the AIM coating rules of the OTC states and Ohio. This coating category for reactive penetrating carbonate stone sealer is not included in any of the rules that IDEM reviewed. Throughout this rulemaking, IDEM has strived to ensure consistency with

the OTC model rule and neighboring states' AIM coating rules. Imposing new VOC content restrictions on a coating category that is not covered in a majority of AIM coatings rules adds complexity for regional and national manufacturers. In order to maintain consistency with other states' AIM coating rules IDEM has not included the coating category for reactive penetrating carbonate stone sealer. If, and when, the federal rule is revised, and if it includes this coating category, IDEM will consider amending Indiana's AIM rule.

Comment: The category definition for waterproofing concrete/masonry sealers in the current OTC model rule was adopted from regulatory language that has been corrected in the South Coast Air Quality Management District and is in the process of being corrected in the California Air Resource Board's (CARB) revised Suggested Control Measure (SCM). As written, the definition applies to film forming coatings; however, it is broadly recognized that this class of materials also includes penetrating, clear water, and stain repellents that do not form films in the traditional sense. Additionally, CARB has recognized that the list of properties in the proposed definition is not necessarily all inclusive for every type of coating in this diverse category. Instead, NPCA recommends that the words "film forming" be deleted from the definition of waterproofing concrete/masonry sealers. (NPCA)

Response: IDEM removed the words "film forming" from the definition of waterproofing concrete or masonry sealer at 326 IAC 8-14-2(75).

Comment: NPCA recommends that the recordkeeping and reporting requirements for perchloroethylene and methylene chloride, recycled coatings, and bituminous roof coatings be changed. It is important to note that these "automatic reporting" requirements originated from the California Air Resources Board (CARB) 2000 AIM SCM and were subsequently included in the OTC model rule. However, in October 2007, CARB deleted these reporting requirements from the 2007 AIM SCM since it felt that this information was no longer needed. NPCA suggests that to be consistent with CARB that IDEM delete these requirements as well. If over the objection of NPCA, IDEM does not delete these requirements, NPCA requests that IDEM include a 90 day period of time for manufacturers to report this information. (NPCA)

Response: IDEM amended the recordkeeping and reporting requirements for the following: AIM coatings that contain perchloroethylene or methylene chloride (326 IAC 8-14-5(d)); recycled coatings (326 IAC 8-14-5(e)); and bituminous roof coatings or bituminous roof primers (326 IAC 8-14-5(f)). The automatic reporting requirements were removed. However, the department generally gives a source thirty (30) days to submit a report, not ninety (90) and has amended the rule language accordingly to represent the department's general practice.

Comment: There is an overlap issue with the definitions for flat and nonflat coatings. A coating with a 60 degree gloss of 6 and an 85 degree gloss of 10 could be considered either, based on the proposed definitions. NPCA recommends the following:

"Flat Architectural coating" means a coating that does not meet the definition in this regulation for another coating and which registers a gloss of less than 15 on an 85-degree

gloss meter held at an 85° angle to the coated surface or less than 5 on a 60-degree gloss meter held at a 60° angle, and which is described on the label as a flat coating, according to ASTM Designation D 523-89 (1999), incorporated by reference in paragraph 33.6.5(c) of this regulation.

"Non-flat Architectural coating" means a coating that does not meet the definition in this regulation of another coating and which registers gloss of 15 or greater on an 85-degree gloss meter held at an 85° angle to the coated surface and 5 or greater on a gloss meter when held at a 60° angle, according to ASTM Designation D 523-89 (1999), incorporated by reference in paragraph 33.6.5(c) of this regulation. (NPCA)

Response: The language included in the comment from NPCA does not match the definitions of flat coating at 326 IAC 8-14-2(26) and nonflat coating at 326 IAC 8-14-2(41) in the published draft rule language. However, IDEM amended the two definitions to clarify and remove the overlap issue in response to NPCA's comment. This amendment is also consistent with the Illinois' and Ohio's definitions of flat and nonflat coatings.

Comment: The reporting requirements under Section 5(a) are very extensive and while NPCA appreciates that IDEM included a 90 day period of time for manufacturers to reply, for the amount of information requested, additional time will be needed. To help alleviate this problem, NPCA recommends that IDEM grant manufacturers extensions if these extensions are requested in writing. NPCA recommends revising the language in Section 5(a) as follows:

Such records shall be kept for a period of not less than five (5) years and shall be made available to the Department for inspection within 90 days of request, unless an extension of time is granted by the State (as per written manufacturer request for extension) .
(NPCA)

Response: IDEM reviewed the AIM coating rules of the OTC states and Ohio. Based on IDEM's review of those rules, the standard period of time given to manufacturers to reply to a request from the department is 90 days with no language providing for an extension. The reporting requirements in section 5(a) are similar, if not identical, to those required by the OTC states and Ohio. To maintain consistency with other states' AIM coating rules, Indiana will not grant extensions to the 90 day reporting requirement.

Comment: For consistency with the Illinois and other OTC state rules, NPCA suggests that Section 3(g) regarding rust preventive coatings be replaced with the following:

"No person shall apply or solicit the application of any rust preventive coating for industrial use unless such a rust preventive coating complies with the industrial maintenance coating VOC limit specified in subsection (b). If the coating is also regulated under another Part, the more restrictive limit shall apply." (NPCA)

Response: IDEM reviewed the language in 326 IAC 8-14-3(g) regarding rust preventative coatings. In the draft rule language that published in the Second Notice of

Comment Period, IDEM included additional requirements for rust preventative coatings based on Ohio's AIM rule. However, after reviewing the OTC model rule and other OTC states' rules, IDEM amended the language to match the OTC model rule language.

Comment: NPCA recommends clarifying that section 4(4) applies to Industrial Maintenance Coatings and revise as follows:

Industrial Maintenance Labels - The label or the lid of the container in which the coating.... (NPCA)

Response: IDEM amended the language in section 4(4) to clarify that the section applies to industrial maintenance coatings.